

SUMMARY ANALYSIS OF AMENDED BILL

Franchise Tax Board

Author: Briggs Analyst: Kristina North Bill Number: AB 841

Related Bills: See previous analysis Telephone: 845-6978 Amended Date: April 27, 1999

Attorney: Patrick Kusiak Sponsor:

SUBJECT: 1999 California Land & Water Conservation Pilot Project Qualified Donations Credit/Nonrecognized Gain On Sale Of Property

DEPARTMENT AMENDMENTS ACCEPTED. Amendments reflect suggestions of previous analysis of bill as introduced/amended _____.

AMENDMENTS IMPACT REVENUE. A new revenue estimate is provided.

AMENDMENTS DID NOT RESOLVE THE DEPARTMENT'S CONCERNS stated in the previous analysis of bill as introduced February 24, 1999.

FURTHER AMENDMENTS NECESSARY.

DEPARTMENT POSITION CHANGED TO _____.

REMAINDER OF PREVIOUS ANALYSIS OF BILL AS INTRODUCED February 24, 1999, STILL APPLIES.

OTHER - See comments below.

SUMMARY OF BILL

This bill would establish the California Land and Water Conservation Pilot Project of 1999 within the Public Resources Code (PRC) and would establish tax credits within the Revenue and Taxation Code. This analysis addresses the provisions of the bill that pertain to the tax credits.

Under the Personal Income Tax Law (PITL) and the Bank and Corporation Tax Law (B&CTL), this bill would allow a tax credit to taxpayers who donate property (as defined) to the state, any local government, or to any nonprofit organization designated by the state or local government. The amount of tax credit under the PITL would range from 65% to 85% of the fair market value (FMV) of the donated property. The amount of tax credit under the B&CTL would be 65% of the FMV of the donated property.

Also under the B&CTL, a seller would not have to recognize gain on the sale of property if the purchaser contributes it within 90 days of the purchase to the state, a local government, or a nonprofit organization, pursuant to the pilot project established by this bill.

SUMMARY OF AMENDMENT

Under the PRC, the April 27 and April 14, 1999, amendments made changes to the California Land and Water Conservation Pilot Project of 1999, which do not impact the department's policies, procedures or the collection of state income tax revenue.

Under the B&CTL, the April 14, 1999, amendment made a nonsubstantive, technical change.

Board Position:

<u> </u> S	<u> </u> NA	<u> </u> NP
<u> </u> SA	<u> </u> O	<u> </u> NAR
<u> </u> N	<u> </u> OUA	<u> </u> X PENDING

Department/Legislative Director Date

Johnnie Lou Rosas 6/15/1999

The department's analysis of the bill as introduced February 24, 1999, still applies. The department's implementation and technical considerations are restated below.

Implementation Considerations

- ◆ The qualified contribution must be accepted by the Secretary and approved by the Legislature. Generally, when another state agency is handling items which are eligible for a credit, the agency is required to provide the FTB with verification, such as the names of the recipient and the donor, the donor's taxpayer identification number(s), and the qualified credit amount. An alternative would be for the Secretary to provide verification to the taxpayer, who could provide it to the FTB upon request. Also, the author may wish to consider adding a requirement that if the property were purchased from a corporation within 90 days before donation, the purchaser must disclose the corporation name and the date and location of purchase, and that the corporation must receive verification from the Secretary that its gain should not be recognized.
- ◆ Section 37014 defines a "qualified donation" and the tax credits authorized by this bill are based upon the existence of a qualified donation. Additional provisions with the pilot project would restrict the Secretary's ability to accept property. For example, Section 37009 provides that property may not be accepted by the Secretary if the land is otherwise required to be donated as a condition of development. In the event land is accepted without the Secretary's knowledge of developmental set-aside requirements, the tax credits are authorized notwithstanding that the property may not be qualified. If this is not the author's intention, amendments may be necessary to more closely tie the Public Resources Code and Revenue and Taxation Tax Code definitions.
- ◆ Credits are typically used within eight years of being earned. Since this credit does not have a carryover limit, the department would be required to retain the credit carryover on the tax forms indefinitely.
- ◆ The Secretary is authorized to accept property, defined to include only property for which a deduction under IRC Section 170 is permitted. Apparently the Secretary is to make a determination on the eligibility of a tax deduction. If FTB staff disagreed in connection with an audit of the claimed credit, disputes would arise with taxpayers caught in the middle.

Technical Considerations

Both the pilot project and the tax incentives are repealed on January 1, 2004. The amendment to Section 17039 in Section 2 of the bill provides a repealer on January 1, 2004, and Section 3 of the bill, which reinstates Section 17039 to current law, becomes operative on January 1, 2004, leaving both sections operative for a day. Section 2 of the bill should be repealed on December 31, 2003, to avoid this problem. However, the repealer in Section 2 is unnecessary (and thus Section 3) and may cause confusion with respect to the transactional operative date ("contribution made") of the actual credit language proposed by this bill. If Section 2 were not repealed, its provision related to this credit would become obsolete when the credit itself becomes inoperative. At that time, the amendment to Section 17039 added by this bill could be deleted.

More importantly, if a contribution were made on or before January 2004, but

3 of the bill would result in the credit not receiving the preferential treatment specified in Section 2 of this bill.

for any qualified donation made on or after July 1, 2000, and before January 1, 2004, since the credit provision is " applies only to contributions made on or after July 1, 2000, and due to the repeal date language, "on or before January 1, 2004." The same issues exist with

The actual credit language allows taxpayers a credit equal in amount to a specified percentage "of the FMV of any qualified donation"; however, if the

Resources Agency, the actual credit language should eliminate the reference to FMV and instead directly tie the allowable credit amount for each taxpayer to the

Otherwise, disputes may arise with taxpayers in circumstances where a taxpayer is able to obtain an appraisal of FMV that differs from that assumed by the

"qualified contribution."

BOARD POSITION